S. 10 provides the framework to address the modest federal role in this effort. We should not let politics overwhelm this issue. I believe that this legislation must move forward. This will require us to work together. It will also require leadership from the Administration. In the ten months since this legislation was ordered reported from the Judiciary Committee, we have heard no productive comment from the Administration on the bill. The President must show leadership on this, and support S. 10. Otherwise, I am afraid that another year will pass without our having taken action on this critically important issue.

I also ask my colleagues to join me in this effort, and to join me in extending the sympathy of the Senate to the families and victims, to the community of Springfield, and the State of Oregon.

## THE WORK OF THE SENATE

Mr. LEAHY. Mr. President, this week we conclude another work period by disappointing the American people. We recess, again, without concluding the people's business and passing a strong tobacco bill. Tobacco legislation is now added to the litany of important matters the Congress has left unfinished.

Last month, the Congress adjourned without even completing the federal budget and this month we recess, again, without concluding even that basic action.

Most Americans think of April 15 as the day that they file their tax returns and pay their taxes, and most Americans dutifully collect their financial records and go through the sometimes arduous task of preparing their tax returns. I hope that next year and in the years ahead that task will be made a little easier by legislation I have sponsored to require the IRS to post information and forms on the Internet, along with regulations and rulings.

Well, April 15 was also the legal deadline for Congress to have passed a budget resolution. While the Senate did some preliminary work on a flawed proposal earlier this year, Congress is recessing, again, without completing this fundamental task—another duty ignored, another legal requirement violated.

I hope that as Congress returns from its Memorial Day break it will complete work on a balanced budget to serve the American people without additional delay. It should be balanced in two senses: It should be a balanced series of proposals to meet the health, education, environmental and law enforcement needs of the country. And it will also, for the first time in almost three decades, be a balanced budget that will not rely on deficit financing.

I recall all too well last year when we were told that we could never achieve a balanced budget without a constitutional amendment. I recall the stacks of deficit-laden federal budgets proposed by Republican and Democratic Presidents since President JOHNSON and being told that the only answer to annual budget deficits was to pass an ill-conceived constitutional amendment whose terms and effects could not be explained. I defended the Constitution then and this year President Clinton sent us the first balanced budget in almost 30 years.

With the cooperation of the Republican leadership in the Congress we can enact the first balanced budget since 1969, and we will have done it without inserting a fiscal straightjacket into the text of the United States Constitution. They said it could not be done, but it can and will as a result of the sound fiscal policies of this Administration which have lead not only to balance but to the prospect of budget surplus. In 1993, a Democratic Congress put us on the right road to fiscal responsibility when we took the hard votes and passed the President's plan. Congress should culminate that extraordinary 5-year effort without further delay.

Completing action on the budget is the first step toward Congress taking action on the annual appropriations bills that are so important to the government programs that protect the environment and assist State and local governments with education and law enforcement. Republican Congressional leadership is well-known for shutting down the government by not completing work on these basic measures in a timely way.

Those contracting with the government, working in partnership with government services and those dependent on government services deserve better. Americans deserve piece of mind and the assurances that their government is working. Congress needs to complete its appropriations so that the agencies and service providers can plan programs, pay staff and work with the American public in an effective manner.

It is high time for the congressional leadership to do its job and for the Congress to get on about the business of governing.

Congress should not be taking breaks without having completed the work of the people. Such callous disregard for the needs of the American people has become too much the rule as year after year under Republican leadership Congress recesses without having completed its work on emergency supplementals, budgets, and appropriations bills.

The Senate has also failed to take action to end the judicial emergency in the United States Court of Appeals for the Second Circuit. On March 25, the five continuing vacancies on the 13-member court caused Chief Judge Ralph Winter to certify a Circuit emergency, to begin canceling hearings and to take the unprecedented step of having 3-judge panels convened that include only one Second Circuit judge.

I have been urging favorable Senate action on the nomination of Judge Sonia Sotomayor to the Second Circuit to fill a longstanding vacancy. That nomination remains stalled on the Senate calendar. Before the last recess I introduced legislation calling upon the Senate to address this kind of judicial emergency before it takes another extended recess. The Senate has pending before it four outstanding nominees to the Second Circuit whose confirmations would end this crisis.

Unfortunately Republican Senate leadership has not taken the judicial vacancies crisis seriously and has failed to take the concerted action needed to end it. They continue to perpetuate vacancies in almost one in 10 federal judgeships.

With 11 nominees on the Senate calendar and 32 pending in Committee, we could be making a difference if we would take our responsibilities to the federal courts seriously and devote the time necessary to consider these nominations and confirm them. Instead, we are having hearings at a rate of one a month, barely keeping up with attrition and hardly making a dent in the vacancies crisis that the Chief Justice of the United States has called the most serious problem confronting the judiciary.

We began this legislative year prepared finally to make progress on issues like campaign finance reform, tobacco legislation and juvenile crime legislation. Republican leadership has lead to inaction on all three.

On the issue of campaign finance reform, Democrats and some notable Republicans have been prepared to attack the soft money that so pervades the current system. Rather than close the loopholes and correct the system, the Republican leadership has chosen to close the debate and perpetuate the status quo.

On tobacco legislation, we have an important opportunity to make real progress. Now that the courts have moved to disclose the secret documents from the industry's efforts to hide the nature of nicotine addiction and their marketing efforts to children, now that the tobacco companies' lobbying stranglehold on Congress has been loosened, and now that we have demonstrated that the majority of the Senate agrees with Senator GREGG and me that we need not grant special legal protections to tobacco companies in order to enact legislation that can make a difference, it is time for the Senate to move forward. We should be passing strong tobacco legislation.

Since the first week of the year I have been urging attention to the matter of juvenile crime. When the Judiciary Committee reported a misguided bill last year, I noted the improvements that had been made in the Committee's consideration and the aspects that needed to change for us to develop a legislative consensus that could help State and local law enforcement in the battle against juvenile crime.

We have heard for months this would be a priority this Congress. Instead of

reaching across the aisle and working to develop a consensus, some have limited themselves to Republican-only Dear Colleague letters and seeking to pick off a few Democratic allies. Juvenile crime should not be a Republican or Democratic issue. There are things we can do to assist State and local law enforcement without partisanship and by consensus.

Afterschool programs and crime prevention programs should be central to those efforts. I hope that the Senate Republican leadership will join in a truly bipartisan effort.

We still face the same problems and challenges with which we began the year. We need to make progress on encryption policy and we need to promote personal privacy in the electronic age.

Given the lack of attention to congressional responsibilities and the real problems of working families in the first half of this session, I fear what the remainder of this year may hold.

I expect the Republican leadership will find time for some carefully choreographed media efforts and will make time for more personal attacks against the President and the First Lady. In an election year, I will not be surprised if they look to rewrite the Constitution of the United States through a series of popular-sounding amendments.

I hope that the Republican majority will find the time to make progress on the legislative agenda that can make a difference in the lives of American people and lead to economic opportunity in the coming century.

## INDEPENDENT COUNSELS AREN'T ABOVE THE LAW, EITHER

Mr. LEVIN. Mr. President, about one year from now, in June 1999, the independent counsel law is due to expire unless Congress acts to renew it. In the Senate, the Governmental Affairs Committee, of which I am a member, is responsible for examining whether the independent counsel law ought to be reauthorized. I rise today because, as I've begun to look at the reauthorization issues, one stands out as central to the law, central to the question of reauthorization, and central to the issue of whether the independent counsel law is a tool of fairness or a weapon of politics.

In a recent Law Day speech, independent counsel Kenneth Starr proclaimed that, ''No one is above the law.'' He is correct. No one is above the law—certainly not the President, who was the focus of Starr's remarks, but equally so, not an independent counsel.

The question I want to discuss today is whether independent counsels are themselves complying with the law, in particular a provision at 28 U.S.C. 594(f)(1), which states that independent counsels ''shall'' comply with the ''written or other established policies of the Department of Justice.''

This is a straightforward provision. The law says ''shall,'' not ''may,'' not ''should.'' It makes compliance with established Justice Department policies mandatory, not discretionary, for every independent counsel. The only exception to this rule is where compliance with Departmental policies would be ''inconsistent with the purposes of the statute'' such as, for example, compliance with a policy requiring the permission of the Attorney General to take a specific act. Barring this exception, the law's clear general rule is that independent counsels must comply with established Justice Department policies.

This provision in the law is an important one. It is a key constraint to ensure that persons who are subject to independent counsel investigations receive the same treatment as ordinary citizens—no better and no worse. It is a key safeguard against an overly zealous prosecutor.

The Senate felt so strongly about this requirement that, during the law's 1994 reauthorization, the Senate approved an amendment by Senator Bob Dole emphasizing that failure to follow Justice Department policies constitutes ''cause'' for removing an independent counsel from office. The final conference report on the law, while omitting the Senate provision as accurate but too limiting, said, ''refusal to follow important Department guidelines . . .—like many other circumstances—do provide potential grounds for removing an independent counsel from office.''

Independent counsel compliance with Justice Department policies was important to the Supreme Court. In the key decision upholding the independent counsel law, Morrison v. Olson, the Supreme Court referred to the requirement as one of the keys to the law's constitutionality. The Court did so when determining whether the independent counsel law, ''taken as a whole, violates the principle of separation of powers by unduly interfering with the role of the Executive Branch,'' in particular the Constitutional requirement that the President, as head of the executive branch, ensure that the laws be faithfully executed. The Supreme Court stated:

> It is undeniable that the Act reduces the amount of control or supervision that the Attorney General and, through him, the President exercises over the investigation and prosecution of a certain class of alleged criminal activity. . . . Nonetheless, the Act does give the Attorney General several means of supervising or controlling the prosecutorial powers that may be wielded by an independent counsel. Most importantly, the Attorney General retains the power to remove the counsel for 'good cause,' a power that we have already concluded provides the Executive with substantial ability to ensure that the laws are 'faithfully executed' by an independent counsel. No independent counsel may be appointed without a specific request by the Attorney General, and the Attorney General's decision not to request appointment if he finds 'no reasonable grounds to believe that further investigation is warranted' is committed to his unreviewable discretion. . . . In addition, the jurisdiction of the independent counsel is defined with reference to the facts submitted by the Attorney General, and once a counsel is appointed, the Act requires that the counsel abide by Justice Department policy unless it is not 'possible' to do so.

The Court then went on to say, in language directly relevant to this issue: ''Notwithstanding the fact that the counsel is to some degree 'independent' and free from executive supervision to a greater extent than other federal prosecutors, in our view these features of the Act give the Executive Branch sufficient control over the independent counsel to ensure the President is able to perform his constitutionally assigned duties.''

The Supreme Court thus highlighted four ''features'' of the independent counsel law which enable the Attorney General to meet the constitutional requirement that the President, as head of the executive branch, ensure the faithful execution of the law. The four features identified by the Court are the Attorney General's sole authority to request appointment of an independent counsel, her authority to remove an independent counsel from office for good cause, her authority to define the scope of an independent counsel's investigation, and the requirement that independent counsels must abide by Justice Department policy.

Mandatory compliance with Justice Department policies is important not only for the law to be constitutional, but also because that compliance is one of the few practical constraints on the conduct of an independent counsel. The Supreme Court has held that the special court which appoints independent counsels ''has no power to supervise or control the activities of the counsel'' it has appointed. Congress, legally empowered to oversee independent counsels, has shown little interest under the current Republican leadership in monitoring independent counsels investigating the Clinton Administration.

The law does empower the Attorney General to remove an independent counsel from office for good cause, but that draconian penalty is not a practical one and has never been used. For example, if Attorney General Reno were to fire independent counsel Starr for enforcing subpoenas served on Secret Service personnel, the Republican Congress as well as the news media would have her head. The power to terminate an independent counsel, while an essential element in the law's architecture for purposes of constitutionality, is simply not, except for unusual circumstances, a practical means for limiting an independent counsel's individual prosecutorial decisions.

That means a key remaining constraint on independent counsels is the legal requirement that they comply with established Justice Department policies.

Yet questions have increasingly arisen about whether sitting independent counsels are acting in ways that an ordinary federal prosecutor would, or